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HUB LAW OFFICES

HUB LAW OFFICES  
Ford Greene, Esquire  
California State Bar No. 107601  
711 Sir Francis Drake Boulevard  
San Anselmo, California 94960-1949  
Telephone: (415) 258-0360

Attorney for Defendant  
GERALD ARMSTRONG

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY )  
INTERNATIONAL, a California )  
not-for-profit religious )  
corporation; )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
GERALD ARMSTRONG; DOES 1 )  
through 25, inclusive, )  
 )  
Defendants. )  
 )

No. 152 229

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR CONTINUANCE OF  
HEARING DATE ON PLAINTIFF'S  
ORDER TO SHOW CAUSE  
RE PRELIMINARY INJUNCTION

Date: March 6, 1992  
Time: 10:30 a.m.  
Calendar: L & M  
Hearing Judge: Dept. 4  
Trial Judge: Not Assigned  
Arbitration: Not Assigned

INTRODUCTION

On February 4, 1992, the Honorable Beverly B. Savitt ordered Defendant GERALD ARMSTRONG to show cause why a certain settlement agreement should not be enforced against him by means of a preliminary injunction and set a hearing on the matter for 10:30 a.m. on March 6, 1992 in Department 5. Greene Declaration, at ¶¶ 2.

This ex parte application is for one continuance for a period of thirty (30) days, or whatever period the Court determines to be

COPY



1 reasonable, in order to allow ARMSTRONG to meet plaintiff's  
2 application for a preliminary injunction.

3 STATEMENT OF FACTS

4 The factual basis asserted in support of the application for  
5 a preliminary injunction involves facts which span an eight year  
6 period of time. The legal relief sought by plaintiff, if granted,  
7 at minimum would result in a prior restraint of Defendant  
8 ARMSTRONG's First Amendment right to freedom of speech as well as  
9 prohibit him, in perpetuity, from engaging in gainful employment.  
10 Additionally, were a preliminary injunction to issue the public's  
11 right to know - to obtain information regarding the public issue  
12 of the nature and practices of Scientology - would be adversely  
13 affected, thus injuring the "marketplace of ideas" protected by  
14 the First Amendment. Id. at ¶ 3.

15 The agreement which plaintiff seeks the assistance of this  
16 Court to enforce against ARMSTRONG contains a number of provisions  
17 the net effect of which violate public policy as

18 (1) an obstruction of justice;

19 (2) a suppression of evidence of judicially tested facts  
20 which discredit the Scientology organization; and

21 (3) an offer to dissuade participation in judicial  
22 proceedings in violation of Penal Code section 138. Id. at ¶ 4.

23 Plaintiff has purchased the agreement and cooperation of  
24 those who were Defendant ARMSTRONG's former counsel at the time he  
25 executed the settlement agreement. Such attorneys are now  
26 prevented from providing any information to ARMSTRONG in this case  
27 regarding the circumstances of the execution of the settlement  
28 agreement, by declaration or otherwise, unless said attorneys are



1 compelled by deposition subpoena to do so. ARMSTRONG has  
2 requested plaintiff to release said attorneys from the strictures  
3 of said agreement, but has not yet received any response from  
4 plaintiff on this issue. Id. at ¶¶ 6, 7.

5 Finally, ARMSTRONG was one of a number of individuals  
6 knowledgeable of the illegal and criminal practices of plaintiff.  
7 All said individuals have been silenced by a "global" or "block"  
8 settlement agreement, of which ARMSTRONG is a single component. It  
9 is this agreement that plaintiff seeks the Court's assistance in  
10 enforcing against ARMSTRONG. Id. at ¶ 5. Like ARMSTRONG's former  
11 attorneys, such individuals have been silenced with respect to  
12 discussing the circumstances wherein ARMSTRONG executed the  
13 settlement agreement, unless compelled to do so by deposition  
14 subpoena. Id. at ¶ 8.

15 Since plaintiff relies on the Eleventh Circuit decision  
16 upholding the District Court's denial of the press' request for  
17 access to the sealed Wakefield contempt proceedings, in Wakefield  
18 v. Church of Scientology in the U.S. District Court, Middle  
19 District of Florida, Case No. 82-1313-CIV-T-10A, it raises the  
20 facts underlying the Wakefield proceedings. For a period of time,  
21 ARMSTRONG's counsel was counsel for Wakefield and possesses  
22 information material to the manner in which the Scientology  
23 Organization obtain the preliminary injunction therein. Since  
24 those proceedings have been sealed, I ARMSTRONG's counsel is  
25 constrained from discussing his knowledge thereof without an order  
26 from Judge Kovachevich allowing him to do so. Id. at ¶ 9.

27 Plaintiff would not be prejudiced by any delay occasioned by  
28 the grant of a reasonable continuance. Plaintiff complains that



1 the conduct of ARMSTRONG, which it would have this court enjoin,  
2 commenced in June 1991. In light of the fact that plaintiff  
3 waited until February 1992 to seek an injunction belies any claim  
4 it may make that the granting of a continuance would prejudice it.  
5 Were ARMSTRONG's conduct so prejudicial, plaintiff would not have  
6 delayed eight (8) months in seeking injunctive relief.

7 Id. at ¶ 11.

8 For the foregoing reasons, as well as for other reasons,  
9 defendant GERALD ARMSTRONG desires one reasonable continuance to  
10 enable him to meet plaintiff's application for a preliminary  
11 injunction.

12 ARGUMENT

13 In pertinent part, Code of Civil Procedure section 527 (a)  
14 states as follows:

15 An injunction may be granted at any time before  
16 judgment on a verified complaint, or upon affidavits if  
17 the complaint in one case, or the affidavits in the  
18 other, show satisfactorily that sufficient grounds exist  
19 therefor.

20 \* \* \*

21 The defendant, however, shall be entitled, as of  
22 course, to one continuance for a reasonable period, if  
23 he or she desires it, to enable him or her to meet the  
24 application for preliminary injunction. . . .

25 Section 527 has been interpreted not to be as absolute as it  
26 literally reads. In circumstances, such as that which is before  
27 the court now, where a temporary restraining order has not issued,  
28 whether to grant a continuance is discretionary with the Court.  
Although in cases wherein a temporary restraining order has not  
issued, the responding party has no absolute right to a  
continuance, Wutchumna Water Co. v. Superior Court (1932) 215 C.  
734, 739, 12 P.2d 1033, 1035, the court, in an exercise of its



1 discretion may grant one for a reasonable period of time. Cohen  
2 v. Herbert (1960) 186 Cal.App.2d 488, 493, 8 CR 922; Accord, 1  
3 C.E.B. Civil Procedure Before Trial, Injunctions, § 1557.

4 **CONCLUSION**

5 In light of the facts in this case pertaining to defendant  
6 ARMSTRONG's need for a reasonable continuance, and the absence of  
7 prejudice to plaintiff, as set forth above, and in light of the  
8 fact that plaintiff delayed one week in filing its moving papers  
9 after the point at which it obtained an Order to Show Cause issued  
10 from Judge Savitt, defendant GERALD ARMSTRONG respectfully submits  
11 that his ex parte application for a reasonable continuance should  
12 be granted.

13 DATED: March 3, 1992

HUB LAW OFFICES

14  
15 By: 

FORD GREENE

Attorney for Defendant  
GERALD ARMSTRONG